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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,079	07/14/2006	Horst Tillmann	5255-101PUS	9432

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COHEN, PONTANI, LIEBERMAN & PAVANE LLP
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SUITE 1210
NEW YORK, NY 10176

EXAMINER

MORGAN, EMILY M

ART UNIT	PAPER NUMBER
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3677

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04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,079	Applicant(s) TILLMANN, HORST	
	Examiner EMILY M. MORGAN	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11,13,15,17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11,13,15,17 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 21 January 2004. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

Drawings

The drawings were received on 12/19/2008. These drawings are acceptable.

Claim Objections

Claims 11, 13, 15, 17, 19-26 are objected to because of the following informalities: Applicant claims "contact portion" while the specification discloses a "contact section". For the sake of continuity, examiner asks applicant to change "portion" to "section". Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The "adherend" is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Applicant has disclosed in the specification that the adherend is shown as parts 14, 15, 16, 19 and 20, and has disclosed no special definition. Should applicant intend that the parts use an adhesive at the contacting surfaces of the flanges, please claim that, since it has been disclosed in the specification. To claim an "adherend" (or "substance bonded to another by an

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adhesive", from Random House Dictionary) would imply or suggest that it is a separate piece other than the flange, rather than just an adhered flange.

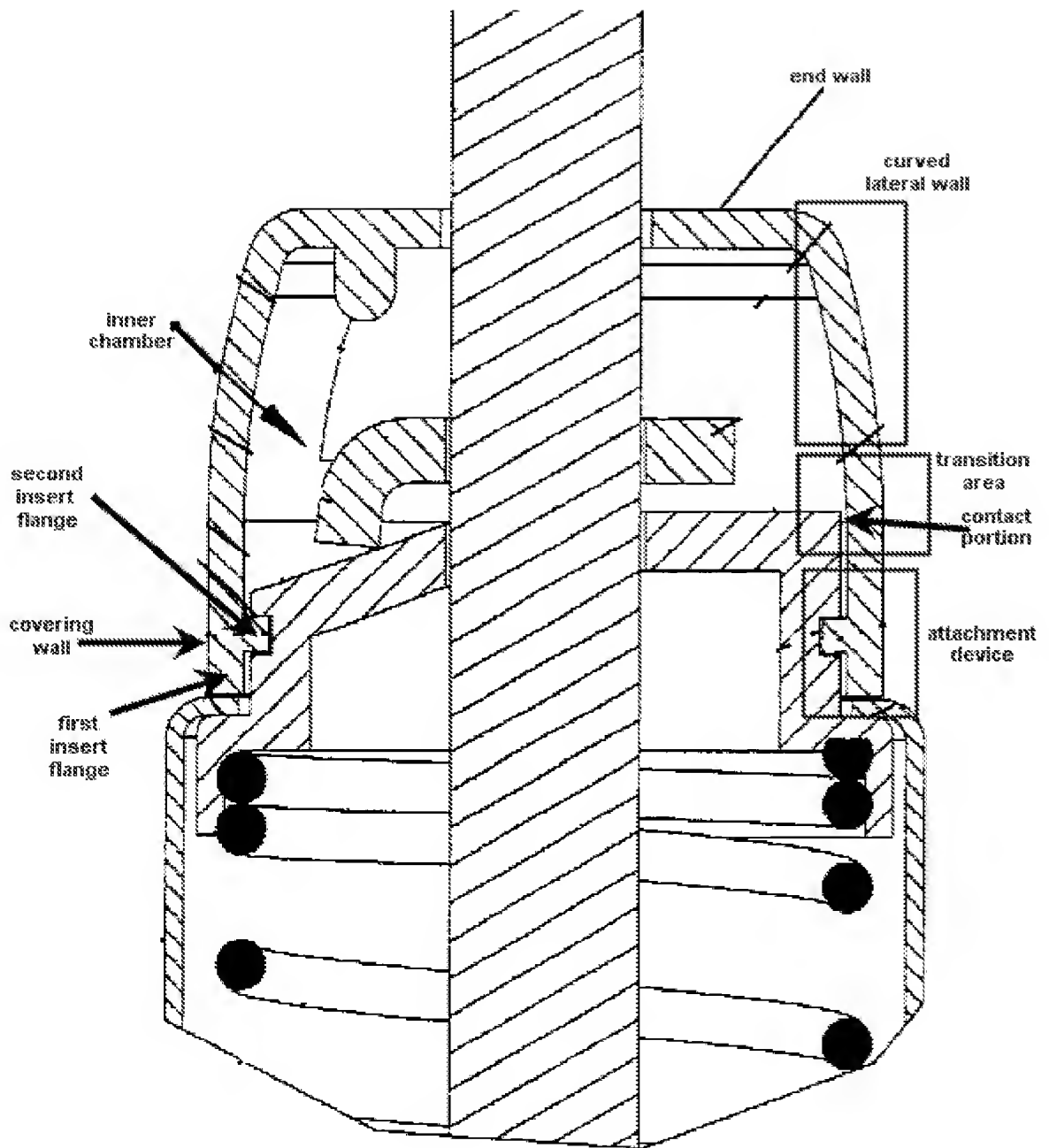
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over patent 6317922 to Kondratuk.

Regarding claim 11, Kondratuk discloses an end cover 40 for a housing of a door closer (figure 10), comprising: a cover housing 40 comprising: an end wall; two opposite convexly curved lateral walls coupled to each other by the end wall; and a flat covering wall connected to the end wall and the lateral walls; and an attachment device supported by the cover housing; and a transition area formed between the end wall and the covering wall and comprising a contact portion; wherein the attachment device comprises a first insert flange integrally connected to the contact portion. Please see figure below.



Kondratuk discloses the claimed invention except for the contour of the end wall and making the covering walls flat formed into the shape of the door closer. It would have been obvious to one having ordinary skill in the art at the time the invention as made to shape the cap into a matching shape of the article, a change in the shape of a

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prior art device is a design consideration within the skill of the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Kondratuk discloses a door closer, with a similar end cap for the cover of a door closer. The end wall is not shown as being convexly curved, and the side walls are convexly curved into a round shape. The shape of the cover and its side walls match the shape of the door closer, which is cylindrical. Changing the shape of the covering walls to match the shape of the closer would have been obvious to one of ordinary skill in the art, as would the change of the shape of the end wall. The function of this piece would not be any different from its current use, and would have been motivated by the desire to create an aesthetically pleasing cover.

The figure above shows that the covering wall is flat, although in reality the sidewalls match the cylindrical shape of the door closer. The covering walls can be altered to any exterior shape desired, as long as the interior of the cap is retained in the shape that matches the cylinder of the door closer. Having an different external shape may be desired by aesthetics or by the ease of which the user can grip the cover in order to rotate it (similar reasoning to why bolts having six sides rather than a circular head). This would not alter the function of the cap, nor prevent any rotation of the cap with relation to the cylinder.

Regarding the contact portion, any part of the cap that contacts the cylinder can be considered a contact portion. The contact portion is shown in the figure above.

Regarding claim 13, Kondratuk discloses the end cover of claim 15, wherein the second insert flange projects into an inner chamber defined by the cover housing.

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Cover 40 integrally forms flange 52 (figure 11), which projects inwardly into the space created by the cap. Since the flange forms inwardly from the cap, it projects into the inner chamber.

Regarding claim 15, Kondratuk discloses the end cover of claim 11, wherein the attachment device comprises a second insert flange being integrally connected to a central area of the end wall. Figure 11 of Kondratuk also discloses having a knob on the interior of the end wall 40, which can be considered an insert flange integrally connected to the end wall.

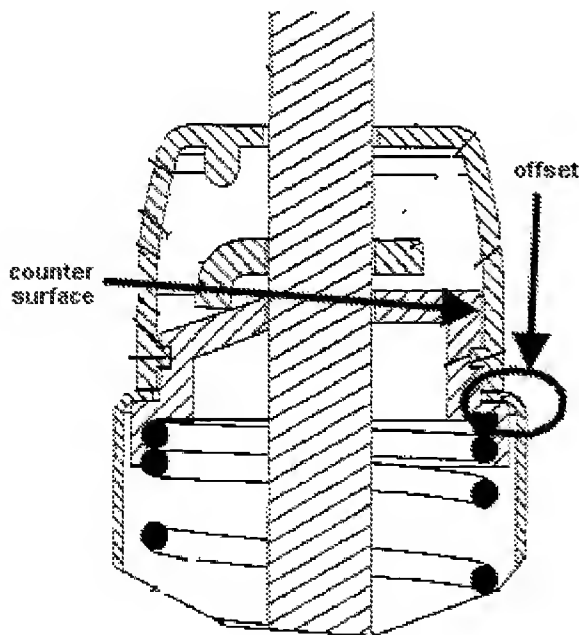
Regarding claim 17, Kondratuk discloses the end cover of claim 11, wherein the contact portion (shown in discussion of claim 1) has at least one attachment surface (shown having 3 sides along the projection 52).

Regarding claim 19, examiner notes this claim integrates a door closer with two of the inventor's covers (of claim 1) on each end of the door closer. Kondratuk discloses a door closer, with one end having the cover as claimed by applicant. The difference between the claim and claim 19 is the claim recites: two end covers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply an end cover to both ends, since it has been held that mere duplication of the essential working parts of a device involves only routine skilled the art. *St. Regis Paper*

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Co. v. Bemis Co., 193 USPQ 8. This would aid the article in becoming a more aesthetically pleasing door closer, and would perform similarly.

Regarding claim 20, Kondratuk discloses the door closer of claim 19, wherein each of the end sides as shown having a diminished transition area for receiving the respective end cover, the diminished transition area having a counter-surface (shown below) covered by the covering wall of the respective end cover, and creating an offset in an outer contour of the main housing.



Regarding claim 21, Kondratuk discloses the end cover of claim 19, wherein the attachment device comprises a second insert flange being integrally connected to a central area of the end wall. Figure 11 of Kondratuk also discloses having a knob on

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the interior of the end wall 40, which can be considered an insert flange integrally connected to the end wall.

Regarding claim 22, Kondratuk discloses the end cover of claim 19, wherein the second insert flange projects into an inner chamber defined by the cover housing. Cover 40 integrally forms flange 52 (figure 11), which projects inwardly into the space created by the cap. Since the flange forms inwardly from the cap, it projects into the inner chamber.

Regarding claim 23, Kondratuk discloses the end cover of claim 19, wherein the contact portion (shown in discussion of claim 1) has at least one attachment surface (shown having 3 sides along the projection 52).

Regarding claim 24, Kondratuk discloses an end cover (figure 11) for a housing of a door closer 20, the end cover comprising: a cover housing comprising: a convexly curved end wall having a central area; two opposite convexly curved lateral walls coupled to each other by the end wall; a flat covering wall connected to the end wall and the lateral walls; and a transition section located between the end wall and the covering wall; and an attachment device supported by the cover housing and comprising: a first insert flange integrally connected to a contact portion disposed in the transition section of the cover housing, a second insert flange integrally connected to the central area of the end wall, and at least one attachment surface formed on the contact portion.

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Kondratuk discloses the claimed invention except for the contour of the end wall and making the covering walls flat formed into the shape of the door closer. It would have been obvious to one having ordinary skill in the art at the time the invention as made to shape the cap into a matching shape of the article, a change in the shape of a prior art device is a design consideration within the skill of the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Kondratuk discloses a door closer, with a similar end cap for the cover of a door closer. The end wall is not shown as being convexly curved, and the side walls are convexly curved into a round shape. The shape of the cover and its side walls match the shape of the door closer, which is cylindrical. Changing the shape of the covering walls to match the shape of the closer would have been obvious to one of ordinary skill in the art, as would the change of the shape of the end wall. The function of this piece would not be any different from its current use, and would have been motivated by the desire to create an aesthetically pleasing cover.

The figure above shows that the covering wall is flat, although in reality the sidewalls match the cylindrical shape of the door closer. The covering walls can be altered to any exterior shape desired, as long as the interior of the cap is retained in the shape that matches the cylinder of the door closer. Having an different external shape may be desired by aesthetics or by the ease of which the user can grip the cover in order to rotate it (similar reasoning to why bolts having six sides rather than a circular head). This would not alter the function of the cap, nor prevent any rotation of the cap with relation to the cylinder.

Regarding the contact portion, any part of the cap that contacts the cylinder can be considered a contact portion. The contact portion is shown in the figure above.

Figure 11 of Kondratuk also discloses having a knob on the interior of the end wall 40, which can be considered an insert flange integrally connected to the end wall.

Regarding claim 25, Kondratuk discloses the end cover of claim 24, wherein the second insert flange projects into an inner chamber defined by the cover housing, see figure in claim 11.

Regarding claim 26, Kondratuk discloses the end cover of claim 24, further comprising an adherend disposed at the transition section.

Response to Arguments

Applicant's arguments filed 12/19/2008 have been fully considered but they are not persuasive.

Regarding the change of shape of the flat walls, examiner has further discussed that the exterior of the cap, which has been shown as the covering wall, can be changed without altering the interior of the cap for purposes of aesthetics.

Regarding the movement of the flange to the transition area, inserting a flange at the end of the cap does not alter the rotational movement, it only prevents the cap from being pushed further onto the cylinder.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMILY M. MORGAN whose telephone number is (571)270-3650. The examiner can normally be reached on Monday-Thursday, alternate Fri, 7:30am to 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor Batson/
Supervisory Patent Examiner, Art Unit 3677

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/EMM/